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Attorneys for Defendant  
**LIFE INSURANCE COMPANY  
OF NORTH AMERICA**  
**d.b.a. CIGNA GROUP INSURANCE**

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

Defendant LIFE INSURANCE COMPANY OF NORTH AMERICA d.b.a. CIGNA GROUP INSURANCE (“LINA” or “Defendant”), responds to Plaintiff DEBORAH VENTO’S (“VENTO”) Complaint to recover disability benefits as follows:

1. Answering Paragraph 1 of the Complaint, Defendant admits that Plaintiff VENTO was covered under her employer's, City of Menlo Park, disability policy and became disabled while insured under the policy.

2. Answering Paragraph 2 of the Complaint, Defendant LINA admits that Plaintiff VENTO timely filed a claim for disability benefits, that Plaintiff VENTO suffered from medical

1 conditions which disabled her in 1999 and that LINA approved disability benefits for Plaintiff.  
2 Further, Defendant LINA admits Plaintiff VENTO'S benefits were terminated at the end of 2006  
3 and that her 2007 appeal was denied. LINA denies either decision was unreasonable.

4       3. Answering Paragraph 3 of the Complaint, Defendant LINA admits the allegation  
5 contained therein.

6       4. Answering Paragraph 4 of the Complaint, Defendant LINA admits that is a  
7 corporation duly organized and existing under Pennsylvania law with its principal place of  
8 business in Philadelphia, Pennsylvania. Defendant LINA denies that it does business as CIGNA  
9 Group Insurance.

10       5. Answering Paragraph 5 of the Complaint, Defendant is without sufficient  
11 knowledge or information to form a belief as to the truth of the allegations contained in said  
12 Paragraph, and on that basis denies each and every allegation contained therein.

13       6. Answering Paragraph 6 of the Complaint, Defendant is without sufficient  
14 knowledge or information to form a belief as to the truth of the allegations contained in said  
15 Paragraph, and on that basis denies each and every allegation contained therein.

16       7. Answering Paragraph 7 of the Complaint, Defendant admits the allegation  
17 contained therein.

18       8. Answering Paragraph 8 of the Complaint, Defendant admits all premiums due  
19 under the Policy have been paid. As to the remaining allegation that Plaintiff has performed all  
20 the obligations under the policy, Defendant denies this allegation.

21       9. Answering Paragraph 9 of the Complaint, Defendant admits that Plaintiff VENTO  
22 timely filed a claim for disability benefits, that Plaintiff VENTO suffered from medical  
23 conditions which disabled her in 1999 and that LINA approved disability benefits for Plaintiff.

24       10. Answering Paragraph 10 of the Complaint, Defendant admits that it terminated  
25 VENTO'S long term disability benefits.

26       11. Answering Paragraph 11 of the Complaint, Defendant admits that it received  
27 documents from Dr. Lorraine Page regarding VENTO'S continued disability and inability to  
28 work full-time employment. Defendant further admits the language and words within the

1 documents from Dr. Page speak for themselves and are the best evidence of their contents and  
2 deny any allegations that are inconsistent therewith.

3       12. Answering Paragraph 12 of the Complaint, Defendant denies each and every  
4 allegation contained in this paragraph, and that it dismissed medical opinions which  
5 substantiated or confirmed VENTO'S disability. Defendant admits it denied VENTO'S appeal  
6 and has not paid any further disability benefits since they were terminated.

7       13. Answering Paragraph 13 of the Complaint, Defendant denies each and every  
8 allegation contained in this paragraph, and that it has refused and continues to refuse to approve  
9 continuation of VENTO'S disability benefits. Rather, LINA reasonably terminated VENTO'S  
10 benefits since she is no longer disabled according to the terms of the policy.

11       14. Answering Paragraph 14 of the Complaint, Defendant denies each and every  
12 allegation contained in this paragraph, and that VENTO has been and remains disabled under the  
13 terms of the subject Policy or that it has unreasonably failed and refuses to pay VENTO benefits  
14 to which she is entitled.

15       **First Cause of Action – Breach of the Duty of Good Faith and Fair Dealing**

16       15. Answering Paragraph 15 of the Complaint, Defendant incorporates by reference  
17 the above Paragraphs 1 through 14 as if set forth fully herein.

18       16. Answering Paragraph 16 of the Complaint, Defendant denies each and every  
19 allegation contained in this paragraph, including that it breached its duty of good faith and fair  
20 dealing and denies each and every act, action, or failure to act, set forth in paragraph 16. Further,  
21 Defendant denies that there exists any other acts by LINA of which VENTO is unaware that are  
22 in violation of its duty of good faith and fair dealing.

23       17. Answering Paragraph 17 of the Complaint, Defendant denies each and every  
24 allegation contained in this paragraph, including that VENTO has suffered or will continue to  
25 suffer damages under the Policy, plus other economic or consequential damages.

26       18. Answering Paragraph 18 of the Complaint, Defendant denies each and every  
27 allegation contained in this paragraph, including that VENTO has suffered anxiety, worry, or  
28 mental and emotional distress, all to her general damage.

19. Answering Paragraph 19 of the Complaint, Defendant denies each and every allegation contained in this paragraph, including that VENTO was compelled to retain legal counsel to obtain benefits due under the Policy or that VENTO is entitled to those attorney, or witness fees or the cost of litigation fees.

20. Answering Paragraph 20 of the Complaint, Defendant denies each and every allegation contained in this paragraph, including that Defendant's conduct was intended to cause injury, was despicable, willful, malicious, oppressive, in conscious disregard of VENTO'S rights, an intentional misrepresentation, deceitful, concealment of a material fact, or intended to deprive VENTO of any property, thereby entitling VENTO to punitive damages.

21. Answering Paragraph 21 of the Complaint, Defendant denies each and every allegation contained in this paragraph, including that LINA'S conduct was highly reprehensible; that it caused personal physical injury or physical sickness; that it demonstrated indifference and reckless disregard for VENTO'S health and safety; that it was repeated and continuous; that it was intentional malice, trickery and/ or deceit; or that VENTO was financially vulnerable to LINA'S conduct.

22. Answering Paragraph 22 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of plaintiff's allegations, and on that basis denies each and every remaining allegation contained therein.

#### **Second Cause of Action – Breach of Contract**

23. Answering Paragraph 23 of the Complaint, Defendant incorporates by reference the above Paragraphs 1 through 22 as if set forth fully herein.

24. Answering Paragraph 24 of the Complaint, Defendant admits both parties, VENTO and LINA; owe duties and obligations to each other under the Policy.

25. Answering the Paragraph 25 of the Complaint, Defendant denies it breached any terms or provisions of the disability policy at issue, including that it refused to pay benefits under the subject Policy.

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26. Answering Paragraph 26 of the Complaint, Defendant denies it breached any terms or provisions of the disability policy at issue or that VENTO suffered any compensable damages.

## PRAYER

#### *First Cause of Action – Bad Faith*

27. Answering Paragraph 27 of the prayer for relief, first cause of action, Defendant denies Plaintiff is entitled to any damages or relief requested in this Paragraph.

28. Answering Paragraph 28 of the prayer for relief, first cause of action, Defendant denies Plaintiff is entitled to any damages or relief requested in this Paragraph.

29. Answering the next Paragraph in order, which if numbered would be Paragraph 29, of the prayer for relief; first cause of action, Defendant denies Plaintiff is entitled to any damages or relief requested in this Paragraph.

30. Answering the next Paragraph in order, which if numbered would be Paragraph 30, of the prayer for relief; first cause of action, Defendant denies Plaintiff is entitled to any damages or relief requested in this Paragraph.

31. Answering the next Paragraph in order, which if numbered would be Paragraph 31, of the prayer for relief; first cause of action, Defendant denies Plaintiff is entitled to any damages or relief requested in this Paragraph.

32. Answering the next Paragraph in order, which if numbered would be Paragraph 32, of the prayer for relief; first cause of action, Defendant denies Plaintiff is entitled to any damages or relief requested in this Paragraph.

### *Second Cause of Action – Breach of Contract*

33. Answering the next Paragraph in order, which if numbered would be Paragraph 33, of the prayer for relief; second cause of action, Defendant denies Plaintiff is entitled to any damages or relief requested in this Paragraph.

34. Answering the next Paragraph in order, which if numbered would be Paragraph 34, of the prayer for relief; second cause of action, Defendant denies Plaintiff is entitled to any damages or relief requested in this Paragraph.

1       35. Answering the next Paragraph in order, which if numbered would be Paragraph  
2       35, of the prayer for relief; second cause of action, Defendant denies Plaintiff is entitled to any  
3       damages or relief requested in this Paragraph.

## **AFFIRMATIVE DEFENSES**

## **FIRST AFFIRMATIVE DEFENSE**

## **SECOND AFFIRMATIVE DEFENSE**

### **THIRD AFFIRMATIVE DEFENSE**

#### **FOURTH AFFIRMATIVE DEFENSE**

## FIFTH AFFIRMATIVE DEFENSE

## SIXTH AFFIRMATIVE DEFENSE

**SEVENTH AFFIRMATIVE DEFENSE**

AS A SEPARATE DEFENSE Defendant alleges that any damages sustained by Plaintiff by reason of the events alleged in the complaint were proximately caused or contributed to by Plaintiff's own comparative negligence or other fault.

**EIGHTH AFFIRMATIVE DEFENSE**

AS SEPARATE DEFENSE Defendant alleges that by and through the conduct of Plaintiff or that of her agents, Plaintiff has waived, or is estopped to assert, every claim for relief set forth in the Complaint against this answering Defendant.

**NINTH AFFIRMATIVE DEFENSE**

AS A SEPARATE DEFENSE Defendant alleges that Plaintiff failed to satisfy all conditions precedent to receipt for benefits under the Policy.

**TENTH AFFIRMATIVE DEFENSE**

AS A SEPARATE DEFENSE Defendant alleges that each and every act done or statement made by the Defendant, or their agents, with reference to Plaintiff, were privileged as a good faith assertion of the Defendant's legal and contractual rights.

**ELEVENTH AFFIRMATIVE DEFENSE**

AS SEPARATE DEFENSE Defendant alleges that any and all losses or damages sustained by Plaintiff, as a result of the occurrences alleged in the complaint, were proximately caused in whole or in part by the negligence or fault of persons or entities other than Defendant, and for whom Defendant is not responsible. The negligence and fault of other persons or entities eliminates or reduces any damages Plaintiff may recover from the Defendant in this action.

**TWELFTH AFFIRMATIVE DEFENSE**

AS A SEPARATE DEFENSE Defendant alleges that Plaintiff materially breached the obligations under the contract or policy complained of prior to commencement of this action, which conduct extinguishes the Plaintiff's right to maintain the instant action.

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1                   **THIRTEENTH AFFIRMATIVE DEFENSE**

2                   **AS A SEPARATE DEFENSE** Defendant alleges Plaintiff is guilty of unclean  
3 hands in the matters set forth in the complaint, which conduct extinguishes the right to equitable  
4 relief in this action.

5                   **FOURTEENTH AFFIRMATIVE DEFENSE**

6                   **AS A SEPARATE DEFENSE** Defendant alleges Plaintiff's claim is barred by  
7 the parol evidence rule.

8                   **FIFTHEENTH AFFIRMATIVE DEFENSE**

9                   **AS A SEPARATE DEFENSE** Defendant alleges that Plaintiff failed to comply  
10 with the terms of the Policy that is the subject of this action; and that, accordingly, Plaintiffs  
11 claim for benefits are barred.

12                  **SIXTEENTH AFFIRMATIVE DEFENSE**

13                  **AS A SEPARATE DEFENSE** Defendant alleges that Plaintiff has not sustained  
14 any injury or damage by an act or omission of the Defendant. However, if it is established that  
15 Plaintiff suffered injury or damage for which Defendant is held liable, Defendant alleges that  
16 such injury or damage was proximately caused or contributed to by the intervening negligence or  
17 wrongful acts of Plaintiff, and/or her agents or attorneys, and that those negligent or wrongful  
18 acts by Plaintiff and/or her agents or attorneys, eliminates or reduces any damages Plaintiff can  
19 recover from Defendant in this action.

20                  **SEVENTEENTH AFFIRMATIVE DEFENSE**

21                  **AS SEPARATE DEFENSE** Defendant alleges that Plaintiff has failed to  
22 exercise reasonable care and due diligence to mitigate her damages, if she has any. As a  
23 consequence, Plaintiff's claims should be barred, or alternatively, any damages awarded to  
24 Plaintiff should be reduced in proportion to Plaintiff's fault in failing to mitigate her damages.

25                  ///

26                  ///

27                  ///

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**EIGHTEENTH AFFIRMATIVE DEFENSE**

2           **AS A SEPARATE DEFENSE** Defendant alleges that Plaintiff has failed to  
 3       allege, and has no facts to prove, under the clear and convincing evidence standard, the  
 4       oppression, fraud, or malice required for an award of punitive damages pursuant to *California*  
 5       *Civil Code* Section 3294.

**NINETEENTH AFFIRMATIVE DEFENSE**

7           **AS A SEPARATE DEFENSE** Defendant alleges that any award of punitive  
 8       damages violates the due process clause of the Fifth and Fourteenth Amendments to the United  
 9       States Constitution and the corresponding provisions of the Constitution of the State of  
 10      California.

**TWENTIETH AFFIRMATIVE DEFENSE**

12          **AS A SEPARATE DEFENSE** Defendant alleges that Plaintiff is not entitled to  
 13       punitive damages, attorney's fees, or other damages pursuant to any of the claims for relief  
 14       alleged in her complaint.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

16          **AS A SEPARATE DEFENSE** Defendant alleges that Plaintiff's remedy for any  
 17       alleged breach of contract is limited by *California Civil Code* Sections 3300 and 3302.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

19          **AS A SEPARATE DEFENSE** Defendants allege that Plaintiff's damage claims,  
 20       if any, are limited by the provisions of *California Insurance Code* Section 10111.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

22          **AS A SEPARATE DEFENSE** Defendant alleges that they acted in good faith  
 23       toward Plaintiff in handling her claim and in every other aspect of its dealings with Plaintiff.

24           Defendant reserves the right to assert additional defenses based on information  
 25       gathered in the course of any further investigation and discovery.

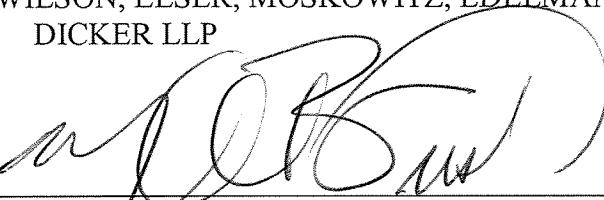
26           WHEREFORE, this Defendant prays for judgment as follows:

- 27           1.       That Plaintiff takes nothing by reason of her Complaint on file herein;
- 28           2.       That Defendant is awarded its costs and expenses incurred in this action;

- 1           3. That Defendant is awarded its attorney's fees incurred in this action;  
2           4. That Defendant recovers such other and further relief as the Court may  
3           deem just and proper.

4           Dated: May 5, 2008

5           WILSON, ELSER, MOSKOWITZ, EDELMAN &  
6           DICKER LLP

7           By: 

8           ADRIENNE C. PUBLICOVER  
9           MICHAEL K. BRISBIN  
10          Attorneys for Defendant  
11          **LIFE INSURANCE COMPANY  
12          OF NORTH AMERICA d.b.a. CIGNA  
13          GROUP INSURANCE**

